

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 06/29/2023
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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M.R., INDIVIDUALLY and ON BEHALF OF J.R., A	:	
CHILD WITH A DISABILITY,	:	
Plaintiff,	:	21-CV-5503 (VEC)
	:	
-against-	:	<u>ORDER &amp; AMENDED</u>
	:	<u>JUDGMENT</u>
NEW YORK CITY DEPARTMENT OF	:	
EDUCATION,	:	
	:	
Defendant.	:	
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VALERIE CAPRONI, United States District Judge:		

WHEREAS on October 31, 2022, the Court, entered an Amended Judgment awarding Plaintiff \$23,977.87 in fees and \$760.57 in costs. When calculating that award, the Court awarded no fees for travel time between Auburn, NY and New York, NY for three in-person hearings and held that it was doubtful “that a reasonable client would retain an Auburn or Ithaca attorney over a New York City attorney if it meant paying New York city rates and billable time for each trip,” Op., Dkt. 56 at 5 (cleaned up); *see also* Am. Op., Dkt. 64 at 7;

WHEREAS on October 4, 2022, Plaintiff appealed the judgment as originally entered in this case, and, on November 30, 2022, filed an amended notice of appeal following the entry of the Amended Judgment, Dkts. 63–65;

WHEREAS on January 31, 2023, the Second Circuit remanded the case to this Court for further proceedings following the Second Circuit’s determination of the then-pending appeal in *H.C., Individually, and on behalf of J.C. a child with a disability v. New York City Department of Education*, No. 21-1582, and related appeals, Dkts. 66–67;

WHEREAS on June 21, 2023, the Second Circuit decided *H.C. v. New York City Department of Education*, 2023 WL 4094873 (2d Cir. June 21, 2023), and held that the Cuddy Law Firm should be awarded one hour of travel time each way for trips taken from Auburn, NY for in-person proceedings in New York City, *id.* at \*5;

WHEREAS on June 28, 2023, the parties jointly moved for reconsideration of the Court's decision denying Plaintiff's request for attorneys' fees for travel time associated with in-person proceedings in New York City, Letter, Dkt. 69; and


WHEREAS a motion for reconsideration may be granted in light of "an intervening change of controlling law," *Virgin Atl. Airways, Ltd. v. Nat'l Mediation Bd.*, 956 F.2d 1245, 1255 (2d Cir. 1992) (quotation omitted).

IT IS HEREBY ORDERED that the motion for reconsideration is GRANTED in light of the Second Circuit's recent decision in *H.C. v. New York City Department of Education*, No. 21-1582. Plaintiff is awarded fees for one hour of travel time each way for the three in-person merit hearings at the hourly rate of \$367.50 previously established for Nina Aasen, totaling an additional 6 hours of billable time and \$2,205 in fees, *see* Op. at 5–6.

IT IS FURTHER ORDERED that the Clerk of Court is directed to enter a Second Amended Judgment awarding Plaintiff \$26,182.87 in fees and \$760.57 in costs, and to CLOSE the case.

**SO ORDERED.**

**Date: June 29, 2023**  
**New York, NY**

  
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**VALERIE CAPRONI**  
**United States District Judge**